DISPATCH MAY 7, 2020

FLYNN GETS HIS BACKDOOR PARDON

On Thursday, the Department of Justice dropped charges against President Donald Trump's former National Security Adviser Michael Flynn, despite his having pleaded guilty twice. The decision is a brutal reminder of just how brazenly Trump and his top lackey Attorney General Bill Barr are willing to abuse their authority to rewrite history surrounding Special Counsel Robert Mueller's investigation, which produced the single most damning report ever written about a sitting president.

The DOJ isn't even pretending Flynn is innocent.

- Flynn pleaded guilty—twice—to lying to investigators. And it wasn't a small lie: He admitted he lied about conspiring with Russian ambassador Sergey Kislyak around their response to Obama administration sanctions on Russia for its attack on the 2016 election, only to subsequently try to withdraw his plea.
- In the document withdrawing their case, the DOJ doesn't contest *either* that Flynn had the conversation with Kislyak to undermine sanctions *or* that he subsequently lied about it.
  - Nor do they contest his other transgressions, like acting as an unregistered foreign agent for the Turkish government *while* he was advising Trump. That included publishing an op-ed calling for the deportation of an exiled Turkish cleric living in the United States on Election Day 2016.
  - They don't even mention Flynn's long, shady history with Russia, such as his paid gig for a Russian propaganda network that landed him literally right next to Putin at a gala in Moscow shortly before he joined Trump's campaign.
- Instead, they argue that the call and those lies were immaterial to the Russia investigation.
- The DOJ claim doesn't stand up to even cursory scrutiny.
  - Flynn's conversations with Kislyak were all about undermining the Obama administration's efforts to punish Russia for their unprecedented and unprovoked attack on American democracy.
  - By making the calls, Flynn was effectively reassuring Russia that they'd backed the right horse and could count on Trump to go easy on Russia, just as he'd promised throughout the campaign.
  - As if to confirm that purpose, Trump tweeted the next morning, "Great move on delay (by V. Putin) – I always knew he was very smart!"
  - One remaining mystery about the calls: As Susan Hennessey of Lawfare explained, Flynn

> "never gave up the missing piece of the puzzle which is whether Trump knew about or directed the call to Kislyak. Mueller said he couldn't get to bottom of it, because Flynn... claimed to not remember."

The decision shows that Trump found his Roy Cohn in Bill Barr.

- Trump forced out his first attorney general, Jeff Sessions, specifically because Sessions wasn't doing enough to undermine the Russia investigation. He repeatedly said he wanted an attorney general who would serve him like Roy Cohn, the former aide to Senator Joe McCarthy who served for years as Trump's legal attack dog.
- Barr fit the bill perfectly: Not only had he helped President George H.W. Bush quash the Iran-Contra investigation, he spent the two years leading up to his appointment laying out how he'd undermine the Mueller investigation to the point where Trump reportedly considered hiring Barr as a defense lawyer.
- Since then, Barr has given Trump exactly what he was looking for, acting as the president's sword and shield to deliver on investigations of Trump's critics and undermine efforts to hold Trump's friends accountable.
  - That included personally intervening to reduce sentencing recommendations not only for Flynn but also for longtime Trump adviser Roger Stone, who was convicted of lying to investigators about creating a backchannel to WikiLeaks during the 2016 campaign.
  - Unsurprisingly, after lead prosecutor Brandon Van Grack withdrew from the case, the only signature on the DOJ's motion to withdraw was that of Tim Shea, one of Barr's closest former aides, whose appointment reportedly "caused a strongly negative reaction among the career prosecutors."
- *For a full list of how Barr has helped Trump undermine the rule of law, read "The Barr File: Trump's Man on the Inside."*

Trump has been obsessed with letting Flynn loose from the very beginning.

- One day after Flynn resigned in disgrace due to the phone calls with Kislyak, Trump began pressuring FBI Director James Comey to drop the case into the former National Security Adviser. That conversation ended up being one of Mueller's many instances of Trump potentially obstructing justice.
- Trump has spent years floating pardons for Flynn and his other criminal cronies. Not coincidentally, that was another example from Mueller's report of how Trump may have obstructed justice, which means Trump surely knew the consequences at stake.
- According to *The New York Times*, Trump was actively considering pardoning Flynn as recently as a week before the DOJ dropped its case, only for advisers to convince him "to hold off and let the case play out."
- Flynn's backdoor pardon gives Trump the easy way out, letting him claim vindication without ever having to expose himself to the risks of pardoning one of his top co-conspirators—or even trying to explain away Flynn's confessed crimes.

There's a reason this is unfolding as Trump tries to deflect accountability for both his past wrongdoing and for his botched handling of the coronavirus. As Quinta Jurecic and Benjamin Wittes wrote for *The Atlantic*, the Russia investigation has become "a lodestar" for the

president's most dishonest defenders: "Discredit it, and you can discredit all the subsequent scandals and investigations with reference to it." With Flynn's backdoor pardon, Bill Barr's DOJ is trying to do just that.